AFR (41)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 61/2001

Shambhuprasad Patel and others

Versus

State of Chhattisgarh

Judgment for consideration

Sd/-

JUDGE
24-4-2007

Hon'ble Shri Justice L.C. Bhadoo

Sd/-
L.C.BHADOO
Judge

Post for 26-4-2007

Sd/-
DHIRENDRA MISHRA
Judge

(42)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 61/2001

APPELLANTS

1. Shambhuprasad Patel, S/o. Kashiprasad Patel, aged about 23 years, R/o. Dhuma, P.S. Torwa, Distt. Bilaspur (C.G.)
2. Kashiprasad Patel, S/o. Keshavlal Patel, aged about 66 years, R/o. Dhuma, P.S. Torwa, Distt. Bilaspur
3. Dulaurin Bai, W/o. Kashiprasad Patel, aged about 50 years, R/o. Dhuma, P.S. Torwa, Distt. Bilaspur

Versus

RESPONDENT State of Chhattisgarh, through P.S. Torwa, Distt. Bilaspur (C.G.

DB: HON'BLE SHRI L.C. BHADOO AND HON'BLE SHRI DHIRENDRA MISHRA, JJ

Shri M.K. Bhaduri, Advocate for the appellants.
Shri U.N.S. Deo, Additional Public Prosecutor, for the State.

JUDGMENT

Per Dhirendra Mishra, J

Appellants have preferred this appeal under Section 374(2) of Cr.P.C. against the judgment of conviction and order of sentence dated 22-12-2000 passed by learned 5th Additional Sessions Judge, Bilaspur in S.T. No. 27/2000 whereby learned Additional Sessions Judge after holding the appellants guilty of causing homicidal death of deceased Tileshwari Bai, has convicted them for offence under Section 302 of I.P.C. and sentenced them to undergo imprisonment for life.

2. In the present case, Appellant No. 1 is husband of the deceased whereas appellants no. 2 and 3 are father-in-law and mother-in-law of the deceased respectively. The deceased was married with appellant No. 1 on 28-5-1999.

3. Case of the prosecution in brief is that Station House Officer of Police Station, Torva gave F.I.R. of Ex. P-20 in Police Station Torva to the effect that deceased Tileshwari wife of Shambhu Patel was admitted in the Hospital on 30-11-1999 as a case of Organo

(43)

Phosphorus poisoning who died in the hospital during treatment. Merg intimation was sent from hospital. During examination of the dead body, injuries and abrasions were found on neck and other parts of the body and death appears to be suspicious in the medico legal examination report.. There were injuries over the neck and thumb impression is stated to be of other person, however there is no fracture in hyoid bone and trachea ring and doctor has also opined that she was forced to consume poison. All the injuries present over the person of the deceased were ante mortem and caused by hard and blunt object and they cannot be caused by one person. Husband of Tileshwari suspected her fidelity and he might have beaten her and forcibly administered her poison with help of his associates. On the basis of this opinion, offence under Section 302 read with Section 34 of I.P.C. has been registered.

4. Inquest of Ex. P-2 was prepared over the dead body of the deceased in presence of the witnesses. Dead body was sent for autopsy to Dharm Hospital, Bilaspur where a team of doctors consisting Dr. R.K. Verma, Dr. S. Pandey and Dr. A.P. Rai conducted post mortem and submitted their report of Ex. P-27. On the basis of memorandum of accused Shambhu Prasad of Ex. P-3, a leather belt was taken into possession vide Ex. P-4. Container of insecticide was taken into possession vide Ex. P-6. Two letters of Ex. P-8 and Ex. P-9 addressed to the husband and father purportedly written by Tileshwari bai were taken into possession vide Ex. P-7. Spot maps of Ex. P-11 and Ex. P-12 were prepared by Halka Patwari. Written report addressed to Superintendent of Police by Bhagwat Patel dated 2-12-1999 is exhibited as Ex. P-13. Two pots containing viscera, Blanket, Lungi, Blouse etc. in a sealed packet, slide and pubic heirs were taken into possession vide Ex. P-16. On the query from hospital, whether symptoms of poisoning were found on the body of the deceased, the doctor has opined that mode of death was asphyxia, viscera was preserved and handed over to the constable for chemical examination and no signs of poisoning were seen. Accused Shambhu Patel was sent to doctor for examination on 10-12-1999 and examination report of the doctor is Ex. P-28. The bed head ticket of deceased Tileshwari Bai was taken into possession vide Ex. P-24. Viscera, insecticide and slide of the

deceased were sent for chemical examination to Forensic Science Laboratory, Sagar vide Ex. P-25. After completion of investigation, charge sheet was filed under Section 302 and Section 304-B of I.P.C. against the appellants in the Court of Chief Judicial Magistrate, Bilaspur who in turn committed the case to the Sessions Judge, Bilaspur and the same was received on transfer for trial by learned Additional Sessions Judge.

5. Learned Additional Sessions Judge framed charge under Sections 302 and 304-B of I.P.C. against the accused persons who abjured their guilt.

6. Prosecution in order to establish the charges against the appellants examined 17 witnesses, thereafter statements of accused persons were recorded under Section 313 of Cr.P.C. The appellants denied the circumstances appearing against them in prosecution evidence and pleaded innocence and false implication. They also examined Dhruv Kumar Sharma, Head Constable as defence witness No. 1. Learned Trial Court after hearing the parties acquitted the appellants from charges under Section 304-B of I.P.C. however, convicted them under Section 302 of I.P.C. and sentenced as mentioned above.

7. Learned counsel for the appellants submits that finding of the trial Court that deceased died due to asphyxia as a result of throttling due to stoppage of respiration and as such died homicidal death is based on surmises. From the evidence available on record, it would be evident that merg intimation was given by medical specialist who treated the patient as an indoor patient in the hospital and treating doctor informed the police on 1-12-1999 that the deceased was admitted on 30-11-1999 as a result of Organo Phosphorus poisoning and she expired on 1-12-1999 at about 11.00 a.m. On the basis of this information, Merg intimation of Ex. P-17 was recorded, therefore, inferenee regarding cause of death by the trial Court is contrary to the evidence available on record. In the post mortem report also, the team of doctors performing autopsy are not certain about the cause of death and in these circumstances, the inference of the trial Court that the deceased died homicidal death as a result of asphyxia is erroneous and cannot be sustained.

(MS)

Whether the prosecution has proved the cause and mode of death of Tuleshwari ?

8. P.W. 16 Dr. V.K. Khetrapal informed the S.O., City Kotwali on 30-11-1999 vide Ex. P-26 that Tileshwari Bai of village Dhooma was admitted in Female Medical Ward at about 2.30 P.M. as a case of poisoning. P.W. 15 B.S. Nishad, Station House Officer has admitted that Head Constable Dhruv Kumar Sharma was posted under him. Vide memorandum of Ex. D-6, a query was made regarding Tileshwari Bai whether she took poison and whether she is in a condition to give dying declaration. It was requested that vomits be preserved. Bed head ticket of Tileshwari was seized during investigation vide seizure memo of Ex. P-24 by the Investigating Officer, however the doctors who have treated the deceased till she died have not been examined. P.W. 17 Dr. Rajnikant Verma has proved the post mortem report prepared by a team of three doctors. Apart from other findings, as many as 20 external injuries have been pointed out.

9. On external examination, it was found that there was blood clots on the left eye, face was turned on right side, face was swollen and congested, tongue was between the teeth, blood mixed with froth was present in mouth, no streak of saliva seen, both hands clasped, both feet extended, she was in menstruation period. On internal examination, it was found that on the left parietal region, there was swelling in size of 3" x 2 ½" and under it, blood was clotted, there was a contusion in size of 3 cm x 2 cm, however, membrane was not torn and there was no internal bleeding in the brain. On internal examination following injuries were found:-

i. Three semi lunar abrasions on Lt. side of neck on equal distance in size of 1.2 cm each probably of nails.

ii. Apart from above, abrasions of 2 cm size surrounded by contusion 3 cm area probably caused by thumb of any other person.

iii. Swelling in size of 3" x 2 ½" over left tempo-parietal region of scalp.

116

iv. Abrasions 2 in numbers of equal size measuring 1.2 cm each one finger apart from one another over dorsal surface of left wrist. Abrasions in size of 7" x 2" on the left forearm in the outer side.

v. Contusion in the size of 4.5" x 3" over right arm on anterior lateral surface appears as if produced due to continuous pressure.

vi. Contusion in size of 4" x 2" on right arm.

vii. Contusion in size of 3" x 2" on right forearm.

viii. Semi lunar abrasion 2" in length interrupted in between over front of neck obliquely situated across the right clavicle.

ix. Abrasion in size of 2 cm x ¼ cm over abdomen on eporgestic region linear in shape horizontally situated.

x. Abrasion in size of 1.2 cm x ¼ cm over right Hypochondrial.

xi. Contusion in size of 1.5" x 1" below left knee.

xii. Contusion in size of 3" x 2.5" below right knee.

xiii. Abrasion two in numbers of equal size semi lunar in shape upon right knee.

xiv. One semi lunar abrasion of 1 cm size over lt. knee.

xv. Contusions two in number 3" apart from each other of 2" x 2" size on right thigh on its anterior surface.

xvi. Abrasion in size of 1 ½" x 1" over left thigh on posterior lateral surface.

xvii. Contusion in size of 3" x 2" over right foot on dorsal surface.

xviii. Contusion 3" x 2" over left foot on dorsal surface.

10. Medical Board performing autopsy have given their opinion about the cause and mode of death as asphyxia. All these injuries were ante mortem and caused by hard and rough object and some abrasions were caused by fingers. Cause of death was asphyxia, death was due to throttling, poisoning and internal injury of head, however, it cannot be said for certainty that the deceased died due

(47)

to throttling, poisoning or internal injuries on head or because of one of the above reasons but, more probability is asphyxia due to throttling. Fracture of trachea and tearing of carotid artery has not been found. This witness has also stated in reply to the query that whether abrasions present over the neck of the deceased were caused by Sambhu Patel or not, it has been replied that no medical opinion can be given. In reply to the query whether symptoms of poisoning were present, it is stated that viscera was preserved and chemical examination was advised, however no definite symptoms of poisoning were seen. Report of the chemical examination has not been produced. Medical evidence available on record may be summarized as under:-

i. Tileshwari Bai was admitted in the Female Medical Ward as a poisoning case on 30-11-1999 at 2.35 p.m. and intimation to this effect was given vide Ex. P-26 by P.W. 16 to the police.

ii. Query was sent by the police to the hospital to ascertain about poisoning and whether the deceased was in a condition to give dying declaration.

iii. Medical specialists of the hospital informed S.O., City Kotwali, Bilaspur that Tileshwari Bai was admitted on 30-11-1999 as a result of Organo Phosphorus poisoning who expired on 1-12-1999 at about 11 a.m., on the basis of which merg intimation of Ex. P-17 was recorded.

iv. The doctors performing autopsy opined that death was asphyxia as a result of throttling, poisoning, or internal injuries of head, however it cannot be said for certainty that the cause of death was all the three or any one but more probably, the death due to throttling has been opined.

v. The doctors who have treated the deceased, have not been examined by the prosecution, who would have been in a better position to state as to what was the line of treatment given to the deceased before her death and how they

(48)

opined that Tileshwari Bai died as a result of Organo Phosphorus poisoning.

vi. Bed Head Ticket and Admission Register were seized vide seizure memo of Ex. P-24, but the same have not been proved though they are available on record. From perusal of the Admission Register, it is clear that she was admitted in Female Ward at 2.35 p.m. on 30th November, 1999 as a case of poisoning. Apart from other medicine, she was administered Atropin injection regularly just after her admission till her death at intervals of 10 and 15 minutes.

vii. Insecticide Phoskill has been seized from place of incident on being produced by accused Sambhu on 1-12-1999.

11. Modi's Medical Jurisprudence & Toxicology 22nd Edition has dealt with Organo-Phosphorus Compounds and allied poisons in Chapter III of Section 2, Toxicology. The author has mentioned that Organo-phosphorus compounds and allied poisons are commonly used as insecticides in agriculture and easy availability of the same and quick action is the reason for their popularity for suicidal and homicidal purposes.

12. Symptoms have been given in the book. According to route of entry, the respiratory or gastro-intestinal symptoms are more marked. Early headache, nausea, giddiness, anorexia, tightness of chest, oppression, dimness of vision, miosis twitching of the eye muscles, tremulous tongue and profuse frothing. Late vomiting, sweating, salvation, oronasal froth, pallor, apprehension, incordination, twitching of voluntary muscles accompanied by severe muscular weakness, mental confusion, diarrhea, tenesmus, delirium, weakness and paralysis of respiratory muscles, areflexia, incontinence, bronchospasm, cynosis, pulmonary oedema, convulsions, coma and death may follow. Paralysis of limb muscles as a sequel has been reported.

13. For the purpose of treatment, it is mentioned that Atropin is a specific antidote. It is an anti-muscarinic agent capable of reaching all parts of the body. The dose of atropine depends on the severity of

(49)

the case and is given till signs of atropinisation in the form of dry skin, dilated pupils and tachycardia appear. For mild cases, 2mg intramuscular followed by the same dose at 2 minutes intervals, for moderate cases, 2-4 mg intramuscular or intravenous initially and 2-8 mg at 3-10 minutes intervals, subsequent intramuscular. For severe cases, 4-6 mg are given initially by intramuscular or intravenous route, followed by 2 mg at 3 to 10 minutes interval by the intramuscular route. The use of upto 50 mg in twenty-four hrs. is not unusual.

14. From bed head ticket, it also appears that the patient had responded to the medicine and her general condition was reported to be better at one point of time. Thus from the medical evidence available on record as detailed above, the finding of the trial Court based on contradictory and tentative opinion given by the team of doctors in the post mortem report that Tileshwari died of asphyxia possibly as a result of stoppage of respiration due to throttling and thus her homicidal death is proved, it is also proved that Tileshwari was murdered, is not based on proper appreciation of evidence on record and we are of the considered opinion that the prosecution has not been able to establish the exact cause and mode of death of deceased Tileshwari. Possibility of death due to poisoning cannot be ruled out.

15. There are no eye-witnesses to the incident and conviction is based on circumstantial evidence which may be summarized as under:-

i. That, on the eve of last *Bhaidooj*, appellant Sambhu Prasad had demanded money for purchase of motorcycle and when the demand was not met, he was annoyed and he and his parents started ill-treating the deceased.

ii. That, deceased made oral dying declaration before her father Bhagwat Prasad, mother Phuleshwari, Paras Ram, Anuj Ram, Bharat, Sunita and stated that she was assaulted by Sambhu for motorcycle

(50)

who also administered poison (insecticide) in presence of his parents and they kept quiet.

iii. That, numerous injuries were found on the person of the deceased during inquest as also in the post mortem report and no explanation has been offered by the accused persons who resided with the deceased jointly at their house at the time of incident.

16. Learned counsel for the appellant submits that the appellants were charged under Section 302 and Section 304-B of I.P.C. Learned trial Court after appreciating the evidence available on record, acquitted the appellants from the charge under Section 304-B of I.P.C. and the appellants have been convicted under Section 302 of I.P.C. though there is no evidence available on record to connect the appellants with the death of the deceased. Finding of the trial Court recorded in para 41 of the judgment is based on no evidence. The alleged oral dying declaration before Bhagwat Prasad, father of the deceased and Phuleshwari, mother of the deceased are not reliable particularly in the light of the fact that D.W. 1 Dhruw Kumar Sharma, Head Constable, who was involved in the investigation and has recorded the oral dying declaration Ex.P-7. The finding of the trial Court is based on improper and one sided appreciation of evidence available on record and the defence of the accused appellants has not been considered. The prosecution has failed to prove the case against the appellants by proving the circumstances relied upon independently and chain of circumstances do not establish the guilt of the appellants. Even the motive for commission of offence has not been established. The learned Court below has lost sight of the fact that the allegation that the appellants forcibly administered poison to the deceased is belied by the facts that the appellants immediately rushed the deceased to the hospital after the symptoms of poisoning were detected and she was administered best medical aid in order to save her life. The medical treatment to the deceased in the hospital has not been proved by examining the treating doctor and proving the bed head ticket. The fact that the medico legal report of the

(51)

deceased at the time of admission does not mention the name of the accused persons and the injuries sustained by the deceased make the case of the prosecution doubtful and the Court below ought to have extended benefit of doubt. It is further submitted that the opinion expressed in the post mortem examination that it is more probable that the deceased died of asphyxia due to throttling is contrary to medical evidence available on record. According to the prosecution's own case, the deceased was conscious and talking. In the case of death as a result of asphyxia due to throttling, and homicidal death, the question of treatment does not arise and it is unconceivable that the deceased died due to asphyxia on account of throttling after more than 24 hours and particularly when she was being treated, considering her case to be that of poisoning.

17. Reliance is placed on the judgments in the matters of **Ramreddy Rajesh Khanna Reddy –v- State of A.P. and another** ((2006) 10 SCC 172), **Appasaheb and anr. –v- State of Maharashtra** (2007(1) ANJ (SC) 181), **Megha v. State of M.P.** (1983 (1) M.P.W.N. Note 250), **Jaipal –v- State of Haryana** (AIR 2002 SC 3447) **Heikrujam Chaoba Singh –v- State of Manipur** (1999 SAR (Criminal) 837) and **State of M.P. –v- Kailash** (1996 JLJ 553).

18. On the other hand, learned counsel for the State supporting the impugned judgment contended that the appellants were residing with the deceased in their home, there is oral dying declaration in which allegations that the appellants tortured and beat her has been made, oral dying declaration is supported by medical evidence as numerous injuries have been found on the person of the deceased. It is a case of house murder which has been committed by the appellants in complete secrecy inside the house and, therefore, strict prove of the circumstances as in other cases is not necessary. Reliance is placed on **Trimukh Maroti Kirkan –v- State of Maharashtra** (2006 AIR SCW 5300).

19. We have heard learned counsel for the parties.

20. In the matter of **Ramreddy Rajesh Khanna Reddy** (supra), the Hon'ble Supreme Court in para 26 has observed that:-

(52)

"26.It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the Courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence."

21. In the matter of **Appasaheb and another** (supra), it has been held that demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand of "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure.

22. In the matter of **Megha** (supra), it has been held that where homicidal death is not proved, the witnesses are interested being relatives of the deceased and their testimony is not corroborated by medical evidence, the offence is not made out.

23. In the matter of **Jaipal**(supra), it has been held that where doctors have not positively proved the suggestion that the death was caused due to tablet of aluminium phosphide (celphos), the finding that congestion of organs of deceased as found could be due to other reasons also and the doctor first attending stated that the symptoms present in deceased could be that as in case of food poisoning and where police failed to protect the place where sample of vomits were found and motive is absent, conviction was set aside. Para 33 of the judgment is relevant and quoted below:-

"Dealing with a case of circumstantial evidence the Court has to be circumspect. A note of caution was sounded by a

(53)

Constitution Bench of this Court in Raghav Prapanna Tripathi and others v. State of Uttar Pradesh AIR 1963 SC 74, quoting from R.V. Hodge (1838) 2 Lew CC 227:

"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual the more likely was it, considering such matter, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

24. In the matter of **Heikrujam Chaoba Singh** (supra), it has been held that before an oral dying declaration can be relied upon, the court must be satisfied about the truthfulness of the same and that the said declaration was made by the deceased while he was in a fit condition to make the statement and the dying declaration has to be taken as a whole and the witness who deposes about such oral declaration to him must pass the scrutiny of reliability.

25. In the matter of **State of M.P. –v- Kailash** (supra), where the prosecution case was based upon oral dying declaration made before father and constable in hospital and no certificate regarding mental fitness of deceased was obtained from doctor, it has been held that dying declaration cannot be acted upon and the accused cannot be convicted and further where cause of death said to be forcible administration of poison to deceased and presence of poison also confirmed by medical report, but the FIR not lodged in concerning PS before death of the deceased, prosecution witnesses cannot be believed.

26. To establish the first circumstance, the prosecution has examined P.W. 4 Parasram, grand-father of the deceased. This witness has stated that the deceased was married in last Baisakh. They had given usual dowry at the time of marriage. On 30th November, 1999, from police they learnt that Tileshwari has consumed poison and is admitted in Government Hospital, Bilaspur. He went to hospital along with Anujram, Bharatlal,

Bhagvat, father of the deceased and Phuleshwari, mother of the deceased. They learnt about the same at 9.00 p.m. In the hospital, they met Tileshwari. Tileshwari was recognizing him. Doctor made her vomiting. At 5.00 a.m. her condition had improved whereupon he left her in the hospital and went back their village Deogaon. At 11.30 a.m. they learnt that she has died. Shanbhu asked Tileshwari to bring Rs. 25,000/- for purchase of motorcycle and he does not want anything more. He has seen signs of injuries over her hand, chest, mouth caused by belt. In the cross-examination he has stated that she had put on a blanket over her body upto neck, she had shown her injuries by removing her blanket. When she started talking, Sambhu closed her mouth therefore, she could not speak. He has further stated that till that date, the Inspector did not interrogate him and he never disclosed the police that accused Sambhu tortured Tileshwari in the name of demand of Rs. 25,000/- for motorcycle.

27. Anuj Ram (P.W. 5) uncle of the deceased has stated that Sambhu was married to Tileshwari on 28-4-1999. Usual dowries were given at the time of marriage. Relationship between Tileshwari and Sambhu was alright. Their relations became bitter after Diwali of 1999, when he damended Rs. 25000/- for motorcycle as dowry and they had expressed their inability. On hearing that Tileshwari has consumed poison, he along with 10-12 persons came Government hospital, Bilaspur at about 11.00 p.m. where Tileshwari was admitted and her condition was improving, she was conscious, she had shown her injuries caused by Sambhu by belt. She had told that she was beaten in the name of demand of Rs. 25,000/- for motorcycle. No sooner she was about to tell this, Sambhu placed her hand over her mouth and she could not narrate. He had seen injuries over leg, hand, back, neck and eyes. In para 26, this witness has admitted that there is no custom of dowry in their community. There was no talk of dowry at the time of marriage and no dowry was fixed nor they demanded any dowry and dowry which was given by his brother was accepted by the appellants. They did not insist for motorcycle at the time of marriage. He has admitted that after Diwali for two months, he did not meet Tileshwari.

(55)

28. Bharat Lal (P.W. 6) is real uncle of the deceased. He has also made same allegations as Anju Ram (P.W. 5) regarding demand of dowry and the injuries which she had sustained on the date of incident. Injuries were caused by Sambhu with belt for not giving money as demanded and when her condition was improving at 5.00 am, he returned to village and on next morning he learnt that she has died. In cross-examination, he has stated that when they were trying to enter in the Ward, the duty nurse had not permitted them and had allowed only one lady to enter inside and thereafter Phuleshwari came out and told them about the incident. Throughout the night, they were sitting outside the Ward in verandah and returned Deogaon early in the morning.

29. P.W. 10 Bhagwat Prasad Patel is father of the deceased who has stated that they had given usual dowry in the marriage of their daughter. Initially they treated her properly. On 14-11-1999 Sambhu along with his daughter came to his home and demanded Rs. 25,000/- for purchasing motorcycle, when he expressed his inability, Sambhu got annoyed and returned to his house in the next morning with his daughter. On 31-11-1999 at about 9.00 p.m., he learnt from police persons that Tileshwari has consumed poison and admitted in Government Hospital, Bilaspur. When they went along with Bharatram, Dujram, Parasram, his wife Phuleshwar, his sister Seeta, etc. to Bilaspur on a jeep, he saw marks of nail over both of her hands, back, and injuries caused by belt over hand and back of Tileshwari. In inquiry, she said that Sambhu and his parents have done this. On inquiry about poison, she said that Sambhu has forcibly administered her poison. She also told that they forced her to right letters by beating and she died at about 11.00 a.m. in the next morning. He has stated that Tileshwari has studied upto 9th standard and he recognizes his writing and signature and documents of Ex. P-8 and P-9 have been written by her. He had lodged report vide Ex. P-3 to the Superintendent of Police. In the cross-examination, he has stated that the Inspector interrogated him at the time of inquest and 8-10 days thereafter in their village. At the time of marriage, there was no talk of dowry and whatever he had given at the time of marriage, he had given on his own and there was no contract that after marriage they shall be

(56)

giving more dowry. While demanding Rs. 25,000/-, Sambhu had simply said that he wants to purchase motorcycle therefore, give Rs. 25,000/-. He said that this is dowry. He has further stated that on that night the daughter and son-in-law stayed in his house. They had taken meal together and both of them left to go to their house. He went by Hero Puch as they had come by Hero Puch from Bilaspur. He has stated that in the hospital, he had asked his wife Phuleshwari to ask Tileshwari as to what happened, thereafter his wife narrated him after inquiring then he came to know about the incident. He has stated that in presence of Sambhu and his uncle and aunti, his daughter did not tell anything to them, he did not enquire from his daughter in their presence as her condition was not good at that time. He has further stated that throughout the night accused Sambhu, his aunti and the witness himself and his wife Phuleshwari were present beside the bed of Tileshwari and it is also true that in presence of Sambhu and her aunti, Tileshwari did not narrate anything to him or his wife. He did not make enquiry from the accused appellants as to why they beat his daughter or administered her poison. The day on which Tileshwari died except him, his other family members returned to Deogaon, however he stayed at Bilaspur till her post mortem which was done on the next date of her death. He has stated that on the next day of death of his daughter, he submitted typed complaint to Superintendent of Police, Collector and Mahila Thana but he did not get receipt from three places. About omission present in the diary statement Ex. D-4 regarding presence of marks of nail, the deceased had told him that the accused persons had got her write the letters by beating with belt, he has stated that he told this to the police when his statement was recorded. He has denied the portion "A" to "A" of the statement that when asked, Sambhu said that she had consumed poison. It is true to say that he asked his wife to enquire from Tileshwari and thereafter she enquired from Tileshwari and told them and only then they came to know as to what happened. He has also stated that when his daughter told her that when Sambhu was beating, the other two appellants did not separate them and kept quiet. Hraday Shankar mentioned in letter of Ex. P-8 is his cousin and Promod is son of his sister, again said son of Aunti and

Renuka referred in the letter is his daughter who is studying in 5th Class and who is not married and Hemant is his eldest son. He has denied suggestion that the deceased was raped by Pramod and Hraday Shankar before her marriage and thereafter they had developed physical relationship with his daughter whenever he was not present in his home. He has denied the suggestion that when his daughter came to know that the above fact is known to her husband, she consumed poison. It is also not correct that she wrote the letters Ex. P-8 and P-9 of her own without any pressure. He has denied his statement in Ex. P-6 that his daughter never disclosed that her husband, father-in-law and mother-in-law ever tortured her and on enquiry she always told that she is happy in her home and never disclosed about torture in the name of dowry or for any other reason and she never wrote any letter about the same. He has also denied his statement of Ex. P-6 that when his wife asked her as to why she did so, upon that, she disclosed that she consumed poison of her own freewill. Even when he asked as to why she has done this, then also she said that she has consumed of her own freewill and she also said that nobody has given any kind of trouble to her. However, he has admitted his signature in Ex. D-6 and he has stated that whatever statement he is giving today, he also stated the same fact while giving statement of Ex. D-6, as to why the same are not present in the statement, he does not know. He has further denied the suggestion that the statement which was recorded 20-25 days after the incident was given by him as a result of tutoring.

30. P.W. 11 Phuleshwari has stated that on the eve of Bhaiduj, deceased and her husband came to her house. A demand of Rs. 25,000/- was made by Sambhu, we expressed our inability as a result of which both were annoyed and left their house. Eight-nine days thereafter at about 9.00 p.m. they were informed by the police that Tileshwari has consumed poison and admitted in hospital, she along with other family members went to Bilaspur, there they met Sambhu, his uncle and aunty. All of them had gone there to see Tileshwari. First she enquired from Tileshwari upon which she said that Sambhu has made her to write letter by beating with the belt, she was beaten on account of motorcycle. She had shown marks of injuries on hand, thighs, back and all places of beating. She also

(58)

told that husband of Tileshwari forcibly administered poison by pressing her neck. In the cross-examination, she has denied that she returned Deogaon when daughter was alive and has stated that we were in the hospital till death i.e. at about 10-11 in the day. On that day, at about 2 p.m. they returned to Deogaon by jeep. Her daughter was talking till her death. She has further denied the suggestion that a Police Head Constable has recorded her statement in the hospital and obtained her signature. She has however admitted the suggestion that no dowry was fixed at the time of marriage and there was no promise of dowry to be given later on. She has denied the suggestion that her daughter had told her that after knowing the incident of rape before marriage, Sambhu started doubting her character. To the omission in the diary statement Ex.D-5 about Sambhu making her write letters by beating her with belt, she has stated that she had told at the time of her statement and she does not know as to why it is not mentioned in Ex. D-5. She has stated that police officers had taken Pramod and Hraday Shankar after death of her daughter, however they were released in the evening. She has denied the suggestion that Tileshwari committed suicide by poison out of shame that her in-law had known about the fact that she was raped by Hraday Shankar and Pramod.

31. P.W. 10 Sunita has stated that she had gone to Bilaspur hospital to see Tileshwari along with parents of Tileshwari. Tileshwari recognized her. Tileshwari did not tell her anything thereafter she came out and returned to her village. She has been declared hostile. In the cross-examination, she has stated that Tileshwari did not tell her that her husband, father-in-law and mother-in-law tortured her in her matrimonial house, this fact was told by parents of Tileshwari.

32. Investigating Officer B.S. Nishad P.W. 15 has deposed about investigation and has proved the contradictions and omissions present in the statement of witnesses. In cross-examination in para 22, he has admitted that he received information that Tileshwari is admitted in the hospital. He had sent Head Constable Dhruv Kumar Sharma to hospital for preliminary enquiry. He has further stated

(59)

that no dying declaration was recorded by Head Constable Dhruv Kumar Sharma, no such statement is attached with the case diary, there is no mention of the same in the case diary. Document of Ex. D-6 bears the signature of Head Constable Dhruv Kumar Sharma. By this memo, he has requested that if the injured is in a position to give statement, her statement is to be recorded. Statement of Hraday Shankar and Promod was recorded. Dhruv Kumar Sharma had recorded statement of other witnesses in village Deogaon. He had brought Hraday Shankar and Pramod from Deogaon along with other witnesses. He has denied the suggestion that initially they suspected Hraday Shankar and Pramod.

33. We have reproduced the material portions of the statements of the witnesses on which conviction is based. So far as demand of dowry is concerned, except isolated incident on the eve of Bhaidooj when deceased and accused Sambhu went Deogaon and demanded Rs. 25,000/- for purchasing motorcycle, sufficient evidence is available on record that dowry was never an issue at the time of marriage or subsequent thereto. Allegations of torture in the name of demand of motorcycle has come for the first time in the statement of close relatives of the deceased namely Bhagwat Prasad, father, Phuleshwari, mother, Anuj Ran, uncle and Bharat, uncle who have stated that deceased told them when she was in the hospital that she was assaulted by belt because of motorcycle. Statement of Bhagwat Prasad has been recorded during merg enquiry on 1-12-1999 i.e. the day on which Tileshwari died, however there is no allegation of demand of dowry in the statement of Ex. D-6. Statement (dying declaration) of Tileshwari was also recorded vide Ex. D-7 on 30-11-1999 which bears her signature. The statements of witnesses of oral dying declaration of Tileshwari, diary statement from Ex. D-1 to D-5 have been recorded on 24-12-1999. There is no explanation for this inordinate delay. All the witnesses were present in the hospital in the intervening night of 30th November and 1st December, 1999. It is highly improbable that they would not have disclosed this fact to the police that Tileshwari was beaten with belt and thereafter she was forcibly administered poison by Sambhu in the presence of his parents. Non-disclosure of this fact on the date of incident itself makes statement of the witnesses doubtful. On the

(60)

contrary, as already pointed out above, there is evidence that immediately after the incident, the statement of Bhagwat & deceased Tileshwari were recorded by police and their statements-Ex.D-6 & D-7 do not refer any allegation against the appellants. The inquest of Ex. P-2 was prepared on 1-12-1999 in presence of Bhagwat, father of the deceased, however no suspicion was raised by her father Bhagwat during inquest. Therefore, the alleged oral dying declaration made by the deceased before her mother Phuleshwari, father Bhagwat and other relatives does not inspire our confidence particularly in the light of the fact that in the document of Ex. D-7 (dying declaration) recorded by Head Constable Dhruv Kumar Sharma D.W. 1, the deceased has categorically stated that she accidentally consumed insecticide and started vomiting and her husband admitted her in the hospital. From the order sheet of the trial Court dated 25-11-2000, it is found that the trial Court directed the prosecution to provide copies of the statement of Tileshwari recorded on 30-11-1999 and the statement of Bhagwat recorded on 1-12-1999 and in pursuance of the above order, copies were supplied to the appellants on 29-11-2000 by the prosecution and witnesses Bhagwat and Dhruv Kumar Sharma were summoned.

34. The other relevant piece of evidence available on record is two letters Ex. P-8 and Ex. P-9 purportedly written by deceased wherein she has given cause for consuming poison. Letter of Ex. P-8 is addressed to the husband and Ex. P-9 is addressed to the father. The father of the deceased has admitted in his statement that he recognizes the handwriting and signature of his daughter who had studied upto 9th standard and these letters have been written by her and it bears her signature. There is also evidence available on record that the police interrogated Promod and Hraday Shankar who have been named in this letter as rapist of the deceased. They are near relatives of the deceased. They did not accompany the relatives of the deceased when they went to see Tileshwari in the Hospital and they were not examined by the prosecution as witnesses. We have already held that the statement of the prosecution witnesses of oral dying declaration does not inspire confidence, in the light of the dying declaration Ex.D-7 recorded by

(61)

the police. Considering the document of Ex. P-8 and Ex. P-9, the defence of the appellants that the deceased committed suicide out of shame as her husband had known about her pre-marriage personal life cannot be ruled out.

35. Lastly in the post mortem report as also in the inquest report numerous mark of injuries have been found on the person of the deceased. The appellants have seriously challenged the above and have contended that there is no mention of any external injury over the person of the deceased in the bed head ticket, no treatment for the above injuries has been given to the deceased as there is no mention of the treatment of injuries in the bed head ticket. The name of the appellants is also not mentioned either in the case history of the deceased that they were responsible for injuries or in the memo to the doctor for post mortem and allegations have been made against the appellants subsequently as an afterthought. Non-mention of injuries in the bed head ticket and treatment given for the same when the patient was admitted in the Female Medical Ward creates suspicion. However, the prosecution has failed to connect the cause and mode of death of the deceased with the injuries described in the post mortem report by adducing definite medical evidence.

36. In the instant case also, the conviction is based on oral dying declaration made by the deceased when she was in the hospital to her parents and close relatives, however, no report was made by them during her lifetime in the police station, on the contrary, in their statement recorded immediately after her death on 1-12-1999, they have stated that the deceased consumed poison on her own freewill. There is no definite evidence available on record with respect to the cause and mode of death of the deceased. As already held, the possibility of deceased committing suicide cannot be ruled out as it reflects from the letters of Ex. P-8 and Ex. P-9 written by the deceased before her death.

37. So far as the arguments of the learned counsel for the State Shri U.N.S. Deo, based on the judgment in the matter of **Trimukh Maroti Kirkan** (supra) that it is a case of murder committed inside the house in complete secrecy and therefore, the evidence required

(62)

to establish charge cannot be of same degree as is required in other case of circumstantial evidence, is concerned, it is true that the dowry death crimes are generally committed in complete secrecy inside the house, therefore, nature and amount of evidence required to establish charge cannot be of the same degree as is required in other cases of circumstantial evidence and silence of inmates about the cause of death may be taken as additional link in the chain of circumstances, however on the facts of the present case, from the evidence available on record, the allegation against the appellants are that they beat the deceased and thereafter forcibly administered her poison by pressing her neck, however, the appellants themselves admitted the deceased in the hospital immediately after the incident and treatment was started immediately in presence of her husband and other relatives. The deceased responded to the treatment and according to the prosecution, she was fully conscious and talking. It is not a case where the inmates of the house i.e. the appellants are silent about the cause of death. In fact, their defence is that the deceased consumed poison out of shame. Therefore, ratio of law laid down in the case of **Trimukh** (supra) is not applicable in the present set of facts.

38. On the basis of aforesaid discussion, the impugned judgment of the trial Court holding the appellants guilty for causing homicidal death of Tuleshwar and convicting and sentencing the appellants cannot be sustained. The Court below ought to have extended the appellant benefit of doubt.

39. In the result, the appeal preferred by appellants namely Shambhuprasad Patel, Kashiprasad Patel and Dulaurin bai succeeds. Their conviction and sentence under Section 302 of I.P.C. is set aside and they are acquitted of the charges. It is stated that appellant Sambhu Prasad is in custody since 10-12-1999 and Kashiprasad and Dulaurin are in custody since 24-12-1999. They be set at liberty forthwith if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge